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City Attorney  
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Fox Plaza  
1390 Market Street, Sixth Floor  
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Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO and  
JOSEPH MCCLOSKEY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRED BROUSSARD,

Plaintiff,

vs.

JOHN McCLOSKEY; CITY AND COUNTY  
OF SAN FRANCISCO; DOES 1 – 20,  
inclusive,

Defendants.

Case No.

**CV 10 4997**  
**NOTICE OF REMOVAL OF ACTION UNDER**  
**28 U.S.C. § 1441(b) (FEDERAL QUESTION**  
**JURISDICTION)[28 U.S.C. §§ 1441, 1446]**

**DEMAND FOR JURY TRIAL**

TO THE CLERK OF THE ABOVE COURT AND TO PLAINTIFF AND HIS COUNSEL OF  
RECORD:

NOTICE IS HEREBY GIVEN that defendants City and County of San Francisco and Joseph  
McCloskey, named as defendants in the above-captioned action, No. CGC-10-504362 in the files and  
records of the Superior Court of California for the County of San Francisco, hereby remove said action  
to the United States District Court for the Northern District of California, pursuant to 28 U.S.C.  
sections 1441 and 1446, and are filing in said Superior Court a Notice of Removal.

Defendants, pursuant to 28 U.S.C. §§1441 and 1446, present the following facts to the Judges  
of the United States District Court for the Northern District of California:

1 A civil action bearing the above-caption was commenced in the Superior Court of California  
 2 for the City and County of San Francisco, Case No. CGC-10-504362 on October 4, 2010, and is  
 3 pending therein.

4 Counsel for defendant City and County of San Francisco accepted a Notice and  
 5 Acknowledgment of Receipt - Civil on behalf of defendant City in lieu of personal service on October  
 6 26, 2010. Counsel for defendant Joseph McCloskey accepted a Notice and Acknowledgment of  
 7 Receipt - Civil in lieu of personal service on behalf of defendant McCloskey on November 2, 2010.

8 The sixth and seventh causes of action set forth in the complaint allege claims for violation of  
 9 42. U.S.C. § 1983. More specifically, plaintiff alleges that defendants violated plaintiff's rights under  
 10 the Fourth (and Fourteenth) Amendment(s) of the United States Constitution.

11 All named defendants join in this removal.

12 This action is one which may properly be removed to this Court pursuant to 28 U.S.C. sections  
 13 1441(a) and (b), because the complaint alleges that defendants violated the Fourth Amendment of the  
 14 United States Constitution.

15 To the extent that plaintiff's complaint alleges a claim or cause of action other than violation of  
 16 rights under the laws of the United States, said causes of action may be removed and adjudicated by  
 17 this Court pursuant to 28 U.S.C. §1441(c).

18 Pursuant to 28 U.S.C. §1446(b), copies of the process, pleadings and other orders served upon  
 19 defendants in this action are attached as Exhibit A. Defendants' answer and related documents are  
 20 attached as Exhibit B.

21 WHEREFORE, defendants pray that the above action now pending in the Superior Court of  
 22 California for the County of San Francisco be removed in its entirety to this Court for all further  
 23 proceedings.

#### 24 **DEFENDANTS' DEMAND FOR JURY TRIAL**

25 Defendants City and County of San Francisco and Joseph McCloskey demand a trial by

26 \\\

27 \\\

28 \\\

1 jury in this action on all issues so triable.

2  
3 Dated: November 2, 2010

4 DENNIS J. HERRERA  
City Attorney  
5 JOANNE HOEPER  
Chief Trial Deputy  
6 ANDREW GSCHWIND  
Deputy City Attorney

7  
8 By 

ANDREW GSCHWIND

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10 Attorneys for Defendants  
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**PROOF OF SERVICE**

I, DOROTHY SILVER, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On ~~October 27~~ <sup>Nov. 3</sup>, 2010, I served the following document(s):

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (FEDERAL QUESTION JURISDICTION) [28 U.S.C. §§ 1441, 1446] and JURY TRIAL DEMAND**

on the following persons at the locations specified:

Arnold I. Berschler, Esq.  
BERSCHLER ASSOCIATES, PC  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

Joseph May  
LAW OFFICE OF JOSEPH S. MAY  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

*Attorneys for Plaintiff*

*Attorneys for Plaintiff*

in the manner indicated below:



**BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.



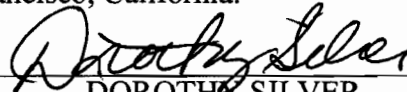
**BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.



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I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed ~~October 27~~ <sup>Nov. 3</sup>, 2010, at San Francisco, California.

  
DOROTHY SILVER

A

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
JOANNE HOEPER, State Bar #114961  
Chief Trial Deputy  
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Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO  
and JOSEPH MCCLOSKEY

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

NOV 03 2010

CLERK OF THE COURT  
BY: WESLEY RAMIREZ  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

FRED BROUSSARD,

Plaintiff,

vs.

JOSEPH MCCLOSKEY; CITY AND  
COUNTY OF SAN FRANCISCO; DOES 1-  
20, inclusive,

Defendants.

Case No. CGC-10-504362

**DEFENDANTS' ANSWER TO COMPLAINT  
FOR DAMAGES**

Date Action Filed: October 4, 2010  
Trial Date: None Set

Defendants City and County of San Francisco, a municipal corporation, and Joseph  
McCloskey, respond to plaintiffs' unverified complaint as follows:

Pursuant to section 431.30 of the California Code of Civil Procedure, defendants deny each  
and every allegation in the complaint.

**SEPARATE AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

Plaintiff fails to state facts sufficient to constitute a cause of action against defendants.



1 **SECOND AFFIRMATIVE DEFENSE**

2 (Comparative Negligence)

3 Defendants allege by way of a plea of comparative negligence that plaintiffs are negligent in  
4 and about the matters and activities alleged in the complaint; that said negligence contributed to and  
5 was a proximate cause of plaintiffs' alleged injuries and damages, if any, or was the sole cause thereof;  
6 and that if plaintiffs are entitled to recover damages against defendants, then defendants pray that the  
7 recovery be diminished or extinguished by reason of the negligence of plaintiffs in proportion to the  
8 degree of fault attributable to plaintiffs.

9 **THIRD AFFIRMATIVE DEFENSE**

10 (Contribution)

11 Defendants allege that the fault of persons other than defendants contributed to and  
12 proximately caused the occurrence; and under the principles formulated in the case of *American*  
13 *Motorcycle Association v. Superior Court*, 20 Cal. 3d 578 (1978), and under the provisions of  
14 California Civil Code §§1431, 1431.1, 1431.2 and 1431.3, defendants pray that the percentage of such  
15 contribution be established by special verdict or other procedure, and that defendants' ultimate liability  
16 be reduced to the extent of such contribution.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Statute of Limitations)

19 Defendants allege that the complaint and each and every cause of action therein is barred by  
20 the statute of limitations as set forth in California Government Code §§ 901, 945.4, 945.6, 945.8,  
21 California Code of Civil Procedure § 335 *et seq.*, and related statutes, as well as the four-year statute  
22 of limitations for RICO claims (*Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143  
23 (1987)).

24 **FIFTH AFFIRMATIVE DEFENSE**

25 (Failure to Mitigate Damages)

26 Defendants allege that the complaint and each and every cause of action therein is barred  
27 because plaintiffs failed to use reasonable diligence to mitigate damages allegedly sustained by them,  
28 and said failure bars or reduces the recovery, if any, from answering defendants.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 (Defendants' Acts Not A Proximate Cause)

3 Defendants state that any act or omission on the part of the defendants was not the proximate  
4 cause of plaintiffs' injury.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 (Negligence of Third Parties - Equitable and Statutory Indemnity for Defendants)

7 Defendants state that plaintiffs' injuries were caused by the negligence or other act or omission  
8 of third parties, and defendants are entitled to equitable and statutory indemnity from such third  
9 parties.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 (Denial of Damages)

12 Defendants deny that plaintiffs have been damaged in any sum or sums, or otherwise, or at all,  
13 by reason of any act or omission of defendants.

14 **NINTH AFFIRMATIVE DEFENSE**

15 (Immunity)

16 Defendants allege the provisions of the California Government Claims Act of the California  
17 Government Code (Government Code §810 *et seq.*) as a measure of the duty of the City and County of  
18 San Francisco and its employees.

19 **TENTH AFFIRMATIVE DEFENSE**

20 (Immunity - Barred by Tort Claims Act)

21 The complaint is barred by the provisions and immunities of the California Tort Claims Act,  
22 without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2;  
23 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821;  
24 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1; 830.2; 830.4;  
25 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835;  
26 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2;  
27 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856;  
28 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8. Under



1 California law, defendants are liable only pursuant to statute.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 (Claims Requirements)

4 Plaintiffs failed to comply with the claims requirements with respect to suits against public  
5 entities, pursuant to Government Code Sections 900-915.4, 930-951 inclusive and other applicable  
6 statutes.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 (Variance Between Tort Claim and Complaint)

9 Plaintiffs' purported causes of action are limited to those factual allegations and theories of  
10 recovery set forth in plaintiffs' written government tort claim, if any, and that to the extent that the  
11 complaint attempts to enlarge or expand upon those allegations and theories, the complaint fails to  
12 state a cause of action and is barred pursuant to Government Code §§ 905, 910, 911.2, 945.5, 950.2,  
13 950.6 and related provisions.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 (Good Faith)

16 Defendants allege that the employees, officials and agents of defendants were at all times  
17 material hereto acting with both subjective and objective good faith, such that any claim for relief that  
18 plaintiffs may have is barred by law.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 (Estoppel)

21 By reason of plaintiffs' own acts and omissions, plaintiffs are estopped from seeking any  
22 recovery from defendants by reason of the allegations set forth in the complaint.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 (Res Judicata)

25 The complaint and each cause of action therein is barred by the doctrine of collateral estoppel,  
26 res judicata, and the case law prohibiting a plaintiff from "splitting" claims or causes of action.  
27 *Ferraro v. Southern Cal. Gas Co.*, 102 Cal. App. 3d 33 (1980).

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 (No Punitive Damages)

3 The City and County of San Francisco, a public entity, is immune from liability for exemplary  
4 damages herein pursuant to the provisions of Section 818 of the California Government Code.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 (Assumption of Risk)

7 Plaintiffs had full knowledge of the risk involved in the activity in which plaintiffs were  
8 engaged at the time of the occurrence of the incident set forth in the complaint; plaintiffs voluntarily  
9 assumed all the risks incident to the activity engaged in at the time and place mentioned in the  
10 complaint, and the loss or damage, if any, sustained by plaintiffs were caused by said risks.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 (Careless, Reckless, Wanton and Negligent Acts)

13 At all times mentioned in the complaint, plaintiffs acted in a careless, reckless, wanton and  
14 negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton  
15 and negligent conduct proximately contributed to the injuries and damages, if any, sustained or  
16 claimed by plaintiffs; that as a consequence, plaintiffs' claims are barred.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 (Release)

19 Plaintiffs have released defendants of liability.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 (Several Liability)

22 In the event that defendants are found to be liable – which liability is specifically denied and  
23 stated merely for the purposes of this affirmative defense – such liability, if any, for non-economic  
24 damages shall be several, and not joint, pursuant to the California Fair Responsibility Act of 1986  
25 (Proposition 51) as set forth in Sections 1431.2 and 1432 et seq of the California Civil Code.  
26 Defendants request that the trier of fact be instructed that the amount of non-economic damages be  
27 allocated in direct proportion to the percentage of fault, if any, assessed against each person or entity  
28 to which the Act applies and that a separate judgment be rendered against each such person or entity in

1 the amount of such non-economic damages attributable to that person or entity.

2 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

3 (Use Of Force Justified)

4 The complaint and each cause of action therein is barred because the use of force against the  
5 plaintiffs by defendants, if any, was privileged and justified.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 (Unclean Hands)

8 The complaint and each cause of action therein is barred by the doctrine of unclean hands.

9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 (Legal Justification)

11 Defendants had legal justification for any actions and omissions and therefore the complaint  
12 and each and every cause of action therein is barred.

13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 (Self-Defense / Defense Of Others)

15 The Complaint and each cause of action is barred because any force used against plaintiffs, if  
16 any, was lawful exercise of self-defense or defense of others.

17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 (Consent to Use of Force)

19 At all times relevant to plaintiffs' complaint herein, plaintiffs knowingly, voluntarily and/or  
20 willingly consented to the use of force and/or contact upon his person.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 (Force Not Excessive)

23 No more force or contact was used on plaintiffs' person than was necessary to effect detention,  
24 overcome any resistance thereto, prevent escape therefrom, prevent injury to the officers and/or to  
25 facilitate and safeguard a valid police investigation.

26 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27 (CA Penal Code Sections Re Arrest & Use of Force)

28 Defendants allege that at all times mentioned in plaintiff's Complaint herein, Defendants acted

1 in accordance with and pursuant to §§834, 834a 835, 835a, and 836 of the California Penal Code.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 (Mutual Combat)

4 Defendants allege that plaintiffs had full knowledge of the risks involved in the mutual combat  
5 activity in which plaintiffs engaged and set forth in the complaint herein; that plaintiffs voluntarily  
6 assumed all the risks incident to the activity engaged in at the time and place mentioned in said  
7 complaint, and that the loss or damage, if any, sustained by plaintiffs was caused by said risks, which  
8 were accepted and voluntarily assumed by plaintiffs when they engaged in said activity.

9 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

10 (Peace Officer Immunities Apply)

11 Defendants are immune from any liability and protected against the burden of litigation under  
12 the statutory and common law immunities protecting peace officers, prosecutors and public officials.  
13 These immunities include, but are not limited to, Penal Code Section 847(b)(1).

14 **THIRTIETH AFFIRMATIVE DEFENSE**

15 (Additional Affirmative Defenses)

16 Defendants presently have insufficient knowledge or information on which to form a belief as  
17 to whether they may have additional, as yet unstated, defenses available. Defendants reserve the right  
18 to assert additional defenses in the event that discovery indicates that they would be appropriate.

19 **ADDITIONAL AFFIRMATIVE DEFENSES**

20 Defendants presently have insufficient knowledge or information on which to form a belief as  
21 to whether they may have additional, as yet unstated, defenses available. Defendants reserves the right  
22 to assert additional defenses in the event that discovery indicates that this would be appropriate.

23  
24  
25 WHEREFORE, defendants pray for judgment as follows:

- 26 1. That plaintiffs take nothing from defendants;  
27 2. That the complaint be dismissed with prejudice;  
28

3. That judgment be entered in favor of defendants;
4. That defendants recover costs of suit herein, including attorneys' fees; and
5. For such other relief as is just and proper.

Dated: November 2, 2010

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Deputy  
ANDREW GSCHWIND  
Deputy City Attorney

By: 

ANDREW GSCHWIND

Attorneys for Defendants



**PROOF OF SERVICE**

I, DOROTHY SILVER, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On November 2, 2010, I served the following document(s):

**DEFENDANTS' ANSWER TO COMPLAINT FOR DAMAGES**

on the following persons at the locations specified:

Arnold I. Berschler, Esq.  
BERSCHLER ASSOCIATES, PC  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

Joseph May  
LAW OFFICE OF JOSEPH S. MAY  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

*Attorneys for Plaintiff*

*Attorneys for Plaintiff*

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax # to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November 2, 2010, at San Francisco, California.

  
DOROTHY SILVER

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

NOV 03 2010

CLERK OF THE COURT  
BY: WESLEY RAMIREZ  
Deputy Clerk

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Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO  
and JOSEPH MCCLOSKEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

FRED BROUSSARD,

Plaintiff,

vs.

JOSEPH MCCLOSKEY; CITY AND  
COUNTY OF SAN FRANCISCO; DOES 1-  
20, inclusive,

Defendants.

Case No. CGC-10-504362

**DEFENDANTS' DEMAND FOR TRIAL BY  
JURY**

Date Action Filed: October 4, 2010  
Trial Date: None Set

Defendants City and County of San Francisco, a municipal corporation, and Joseph McCloskey  
hereby demand a trial by jury on all issues so triable.

Dated: October 27, 2010

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Deputy

By:   
ANDREW GSCHWIND  
Deputy City Attorney

Attorneys for Defendants

**PROOF OF SERVICE**

I, DOROTHY SILVER, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On November <sup>13</sup> 2, 2010, I served the following document(s):

**DEFENDANTS' DEMAND FOR TRIAL BY JURY**

on the following persons at the locations specified:

Arnold I. Berschler, Esq.  
BERSCHLER ASSOCIATES, PC  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

Joseph May  
LAW OFFICE OF JOSEPH S. MAY  
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Fax: (415) 398-1410

*Attorneys for Plaintiff*

*Attorneys for Plaintiff*

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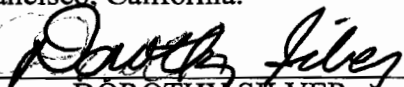
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I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November <sup>13</sup> 2, 2010, at San Francisco, California.

  
DOROTHY SILVER



POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Joseph S. May, SBN 245924</b> <b>Law Office of Joseph S. May</b> <b>22 Battery Street, Suite 810</b> <b>San Francisco, CA 94111</b>  TELEPHONE NO.: (415) 781-3333 FAX NO. (Optional): (415) 398-1410 E-MAIL ADDRESS (Optional): <b>Joseph@josephmaylaw.com</b> ATTORNEY FOR (Name): <b>Plaintiff Fred Broussard</b>	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco</b> STREET ADDRESS: <b>400 McAllister Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco, California, USA 94102</b> BRANCH NAME: <b>Civic Center Courthouse</b>	
PLAINTIFF/PETITIONER: <b>Fred Broussard</b>  DEFENDANT/RESPONDENT: <b>Joseph McCloskey, City and County of San Francisco</b>	
<b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b>	CASE NUMBER: <b>CGC-10-504362</b>

TO (insert name of party being served): Joseph McCloskey**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: October 5, 2010

Joseph S. May

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**This acknowledges receipt of **(to be completed by sender before mailing)**:

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):  
 Civil Case Cover Sheet  
 Alternative Dispute Resolution (ADR) Program Information Packet  
 Case Management Statement  
 Notice to Plaintiff

**(To be completed by recipient):**Date this form is signed: 11/2/2010
Andrew Gschwind, DCA for  
 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
 ON WHOSE BEHALF THIS FORM IS SIGNED)
Joseph McCloskey
 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
 ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

Page 1 of 1

10-02824

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Joseph S. May, SBN 245924</b> <b>Law Office of Joseph S. May</b> <b>22 Battery Street, Suite 810</b> <b>San Francisco, CA 94111</b>  TELEPHONE NO.: (415) 781-3333 FAX NO. (Optional): (415) 398-1410 E-MAIL ADDRESS (Optional): joseph@josephmaylaw.com ATTORNEY FOR (Name): Plaintiff Fred Broussard		<b>RECEIVED POS-015</b> <b>MAYOR'S OFFICE</b> <b>10 OCT -7 AM 11: 21</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco</b> STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, California, USA 94102 BRANCH NAME: Civic Center Courthouse		
PLAINTIFF/PETITIONER: Fred Broussard DEFENDANT/RESPONDENT: Joseph McCloskey, City and County of San Francisco		
<b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b>		CASE NUMBER: <b>CGC-10-504362</b>

TO (insert name of party being served): City and County of San Francisco**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: October 5, 2010

Joseph S. May

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):  
 Civil Case Cover Sheet  
 Alternative Dispute Resolution (ADR) Program Information Packet  
 Case Management Statement  
 Notice to Plaintiff

(To be completed by recipient):

Date this form is signed: 10/26/10
Andrew Gschwend, DCA for  
City & County of San Francisco  
 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
 ON WHOSE BEHALF THIS FORM IS SIGNED)

 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
 ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arnold I. Berschler, SBN 56557, Berschler Associates, PC Joseph S. May, SBN 245924, Law Office of Joseph S. May 22 Battery Street, Suite 810 San Francisco, CA 94111 TELEPHONE NO.: (415) 398-1414 FAX NO.: (415) 398-1410 ATTORNEY FOR (Name): Plaintiff FRED BROUSSARD		ENCLOSED SAN FRANCISCO COUNTY SUPERIOR COURT 2010 OCT -4 PM 2:00 CLERK OF THE COURT DEPUTY CLERK D. STEPPE BY:			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse					
CASE NAME: Broussard v. McCloskey					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;"> <b>CIVIL CASE COVER SHEET</b>  <input checked="" type="checkbox"/> <b>Unlimited</b>            (Amount demanded exceeds \$25,000)         </td> <td style="width: 30%; padding: 5px;"> <input type="checkbox"/> <b>Limited</b>            (Amount demanded is \$25,000 or less)         </td> <td style="width: 40%; padding: 5px;"> <b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b>            Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)         </td> </tr> </table>			<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- |   |  |   |
|---|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input checked="" type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Six (6)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 4, 2010

Arnold I. Berschler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—  
Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JOSEPH McCLOSKEY; CITY AND COUNTY OF SAN FRANCISCO;  
DOES 1-20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
FRED BROUSSARD

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**RECEIVED**  
**MAYOR'S OFFICE**

10 OCT -7 AM 11:21

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court, Civic Center Courthouse  
400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso) **CG0-10-504362**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Arnold I. Berschler, Berschler Associates, PC and Joseph S. May, Law Office of Joseph S. May  
22 Battery Street, Suite 810, San Francisco, California 94111 Telephone: (415) 398-1414; (415) 781-3333

DATE: **OCT 04 2010**  
(Fecha)

CLERK OF THE COURT

Clerk, by **D. STEPPE**, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]

Page 1 of 1

1 Arnold I. Berschler SBN 56557  
BERSCHLER ASSOCIATES, PC  
2 22 Battery Street, Suite 810  
San Francisco, CA 94111  
3 Telephone (415) 398-1414  
Facsimile (415) 398-1410  
4 info@berschler.com

5 Joseph S. May SBN 245924  
LAW OFFICE OF JOSEPH S. MAY  
6 22 Battery Street, Suite 810  
San Francisco, CA 94111  
7 Telephone (415) 781-3333  
Facsimile (415) 398-1410  
8 joseph@josephmaylaw.com

9 Attorneys for Plaintiff  
FRED BROUSSARD

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT  
2010 OCT -4 PM 2:01  
CLERK OF THE COURT  
BY: D. STEFFE

CASE MANAGEMENT CONFERENCE SET

MAR 04 2011 9:00 AM

DEPARTMENT 302

12 IN THE SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

14 FRED BROUSSARD

15 Plaintiff,

16 v.

17 JOSEPH McCLOSKEY; CITY AND  
18 COUNTY OF SAN FRANCISCO; DOES 1-  
20, inclusive,

19 Defendants.

CGC-10-504362  
Case No.

COMPLAINT FOR  
DAMAGES

21 COMES NOW PLAINTIFF FRED BROUSSARD, and complains against Defendants  
22 JOSEPH McCLOSKEY, CITY AND COUNTY OF SAN FRANCISCO, and DOES 1-20,  
23 inclusive, and each of them, as follows:

24 INTRODUCTION

25 1. This action alleges civil rights violations and other claims based on the striking by San  
26 Francisco Police Officer Joseph McCloskey of Plaintiff Fred Broussard, a weak, 58-year-old,  
27 unarmed man, in the head with a police baton, causing a fractured skull and other severe and  
28 permanent injuries.

**PARTIES**

2. Plaintiff FRED BROUSSARD is an adult over the age of eighteen and at all times mentioned herein was, and is a resident of San Francisco County, California.

3. Defendant CITY AND COUNTY OF SAN FRANCISCO (hereafter "CCSF") is a municipal entity, organized under the laws of the state of California, and owns, operates, manages, directs and controls the San Francisco Police Department ("SFPD"), which employs the other named defendant in this action.

4. Defendant JOSEPH McCLOSKEY (hereafter "McCLOSKEY") is and at all times mentioned herein was an adult over eighteen years old, a resident of the State of California and a Sergeant with the San Francisco Police Department, and at all times mentioned herein was acting in the course and scope of his employment, and under color of state law. Defendant McCLOSKEY is sued herein in both his official and individual capacities.

5. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants sued herein as Doe 1-20, inclusive, are unknown to Plaintiff, who sues said defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names and capacities if and when the same are ascertained. Plaintiff is informed and believes, and thereon alleges, that said Defendants, and each of them, are responsible in some manner for Plaintiff's damages as herein alleged. Each reference in this complaint to "defendant," "defendants," or a specifically named defendant refers also to all defendants sued under fictitious names.

6. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the defendants, including all defendants sued under fictitious names, was the agent and employee of each of the other defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and employment.

**JURISDICTION AND VENUE**

7. The amount in controversy exceeds the minimum amount required to bring the case within the Unlimited Jurisdiction of this Court.



1 8. Venue is proper in this Court because the acts or omissions giving rise to the action  
2 occurred in the City and County of San Francisco and because at least one Defendant resides in  
3 the City and County of San Francisco.

4 **GENERAL ALLEGATIONS**

5 9. During the morning of October 12, 2009, Plaintiff was walking on a public street in  
6 San Francisco.

7 10. At said time and place, San Francisco Police Officer Jones, Star #1922 approached  
8 and forced Plaintiff to the ground in a prone position.

9 11. Defendant McCLOSKEY arrived at the scene shortly thereafter. Despite the fact that  
10 Plaintiff, a frail fifty-eight-year-old man, was neither struggling, resisting, exhibiting any violent  
11 or aggressive behavior, nor otherwise posing any threat of harm to anyone, Defendant  
12 McCLOSKEY drew his department-issued baton and struck Plaintiff directly in the head with  
13 such force that it fractured Plaintiff's skull, resulting in severe injuries and damage, as more fully  
14 set forth hereinafter.

15 12. The conduct herein alleged of Defendant McCLOSKEY and DOES 1-10, and each of  
16 them, was perpetrated upon Plaintiff with intent, malice, and without provocation, or in the  
17 alternative was done in reckless disregard of Plaintiff's rights. Each and every use of force  
18 described herein was without warning to Plaintiff and was objectively unreasonable under the  
19 circumstances. Each defendant either personally used unreasonable and unnecessary force upon  
20 Plaintiff, or authorized, ratified, or contributed to such conduct.

21 13. The conduct herein alleged of Defendant McCLOSKEY and DOES 1-10, and each of  
22 them, was perpetrated upon Plaintiff negligently in that said defendants failed to use reasonable  
23 care to ensure no excessive force was used on Plaintiff. Each and every use of force described  
24 herein was without warning to Plaintiff and was objectively unreasonable under the  
25 circumstances. Each defendant either personally used unreasonable and unnecessary force upon  
26 Plaintiff, or authorized, ratified, or contributed to such conduct.

27 14. On information and belief, Defendants and other officers, including DOES 1-10,  
28 have given false statements, filed false police reports, improperly completed Use of Force

1 reports, concealed material information, improperly investigated this matter, and have otherwise  
2 attempted to cover up their and other officers' misconduct, violations of Constitutional rights,  
3 and other tortious and unlawful conduct.

4 15. Plaintiff is informed and believes and thereon alleges that Defendant CCSF and  
5 DOES 11-20 have received numerous complaints and have extensive additional information  
6 concerning use of excessive force and other acts of misconduct in violation of the rules and  
7 procedures of the SFPD, and the rights of the public, committed by various SFPD officers,  
8 including but not limited to Defendant McCLOSKEY and DOES 1-10. Specifically, Plaintiff is  
9 informed and believes and thereon alleges that Defendant McCLOSKEY routinely uses  
10 excessive force as a pattern of his practice as a police officer, including without limitation,  
11 violently, unlawfully kicking a man who was handcuffed on the floor, prior to battering Plaintiff,  
12 as a result of which a finding of excessive force was made by the SFPD's Office of Citizen  
13 Complaints against Defendant McCLOSKEY.

14 16. Defendants CCSF and DOES 11-20, and each of them, by their deliberate acts,  
15 reckless conduct, and negligence in failing to train, supervise, discipline and/or investigate  
16 complaints and/or charges against SFPD officers, including but not limited to Defendant  
17 McCLOSKEY and DOES 1-10, proximately caused injuries to Plaintiff.

18 17. Plaintiff is informed and believes and thereon alleges that at all times herein alleged  
19 it was the custom and policy of the SFPD and their members to permit the use of excessive force  
20 against citizens. This custom and policy is evidenced by the SFPD's failure to train, supervise,  
21 discipline and/or investigate complaints and/or charges against its officers who had known  
22 propensities for violence and excessive force and for violating the constitutional rights of  
23 citizens. The acts herein described of Defendants McCLOSKEY and DOES 1-10, and each of  
24 them, were in keeping with said custom and policy of sanctioning the use of excessive force and  
25 violating the constitutional rights of citizens.

26 18. Plaintiff alleges on information and belief that the conduct of the individual  
27 Defendants was intentional, reckless and oppressive and was done with the intent of depriving  
28 Plaintiff of his constitutional rights. The acts of the individual Defendants, therefore, are such

1 that punitive damages should be imposed against them in an amount commensurate with the  
2 wrongfulness alleged herein.

3 19. On April 9, 2009 Plaintiff a Government Claim with the City and County of San  
4 Francisco.

5 20. On April 15, 2010 the City and County of San Francisco notified Plaintiff that his  
6 Government Claim was denied.

7 **DAMAGES**

8 21. As a direct and proximate result of the Defendants' actions and omissions alleged  
9 herein, Plaintiff sustained, among other injuries, a fractured skull, partial hearing loss, a  
10 concussion and post-concussive syndrome, extreme emotional distress, anxiety, pain, suffering,  
11 and an aggravation and exacerbation of pre-existing anxiety, depression and post-traumatic stress  
12 disorder. Plaintiff continues to suffer the effects of pain, physical and emotional suffering, and  
13 permanent personal injury, and other special and general damages compensable by law.

14 22. As a direct and proximate result of the acts and/or omissions of Defendants, and each  
15 of them, Plaintiff has incurred and continues to incur medical and related expenses for treatment  
16 of his injuries, in amount to be determined according to proof.

17 23. Plaintiff has incurred and will continue to incur attorneys' fees to vindicate his rights,  
18 and thus is entitled to an award of reasonable attorneys' fees according to proof.

19 **FIRST CAUSE OF ACTION**  
20 **BATTERY**  
**(All Defendants)**

21 24. Plaintiff refers to paragraphs 1-23 of this Complaint and incorporates by  
22 reference the allegations of said paragraphs as though expressly set forth at length at this point.

23 25. Defendants McCLOSKEY and DOES 1-10, and each of them, by committing  
24 violence against Plaintiff, intentionally caused an offensive contact with Plaintiff's person.  
25 Plaintiff did not consent to such violent and offensive acts and contact by said Defendants.

26 26. As a direct and proximate result of the conduct of Defendants as alleged herein,  
27 Plaintiff suffered damages in an amount according to proof.

1 27. In doing the things alleged herein Defendants McCLOSKEY and DOES 1-10, and  
2 each of them, were acting in the course and scope of their employment with Defendant CCSF,  
3 rendering Defendant CCSF liable pursuant to Government Code Section 815.2.

4 28. The aforementioned conduct of Defendants McCLOSKEY and DOES 1-10, and each  
5 of them, was willful and malicious and was intended to oppress and cause injury to Plaintiff,  
6 entitling Plaintiff to punitive damages.

7 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

8 **SECOND CAUSE OF ACTION**  
9 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
10 **(All Defendants)**

11 29. Plaintiff refers to paragraphs 1-28 of this Complaint and incorporates by reference  
12 the allegations of said paragraphs as though set forth at length at this point.

13 30. The conduct on the part of Defendants McCLOSKEY and DOES 1-10, and each of  
14 them, described herein above was outrageous, willful, malicious, and done for the purpose of  
15 causing Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress.

16 31. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and  
17 continues to suffer, humiliation, mental anguish, and emotional and physical distress, and has  
18 been injured in mind and body, all to Plaintiff's damage, in an amount according to proof at trial.

19 32. In doing the things alleged herein Defendants McCLOSKEY and DOES 1-10, and  
20 each of them, were acting in the course and scope of their employment with Defendant CCSF,  
21 rendering Defendant CCSF liable pursuant to Government Code Section 815.2.

22 33. The aforementioned conduct of Defendants McCLOSKEY and DOES 1-10, and each  
23 of them, was willful and malicious and was intended to oppress and cause injury to Plaintiff,  
24 entitling Plaintiff to punitive damages.

25 WHEREFORE, PLAINTIFF prays for judgment as hereinafter set forth.

26 **THIRD CAUSE OF ACTION**  
27 **NEGLIGENCE**  
28 **(All Defendants)**

34. Plaintiff refers to paragraphs 1-33 of this Complaint and incorporates by reference  
the allegations of said paragraphs as though set forth at length at this point.



35. At all times mentioned herein, Defendants, and each of them, owed a duty of care to avoid causing unnecessary physical harm and distress to other persons. By taking the actions described above, defendants breached their duties of care.

36. As a direct and proximate result of the negligence of Defendants as alleged herein, Plaintiff suffered, and continues to suffer damages as described herein, in amount according to proof at trial.

37. In doing the things alleged herein Defendants McCLOSKEY and DOES 1-10, and each of them, were acting in the course and scope of their employment with Defendant CCSF, rendering Defendant CCSF liable pursuant to Government Code Section 815.2.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

**FOURTH CAUSE OF ACTION  
STATE CIVIL RIGHTS VIOLATIONS [CAL CIV. CODE §52.1]  
(All Defendants)**

38. Plaintiff refers to paragraphs 1-37 of this Complaint and incorporates by reference the allegations of said paragraphs as though set forth at length at this point.

39. In committing the acts herein alleged Defendants McCLOSKEY and DOES 1-10, and each of them, used violence against Plaintiff that interfered with, or was an attempt to interfere with, Plaintiff's rights under the California Constitution and United States Constitution and Federal and State laws, including, but not limited to, the right to be free from unreasonable searches and seizures.

40. As a direct and proximate result of the actions or omissions alleged herein, Plaintiff sustained injuries and damages as herein set forth, in an amount according to proof at trial.

41. The conduct of Defendants as alleged herein entitles Plaintiff to an award of actual damages, an additional award of up to three times actual damages, a civil penalty, and attorneys' fees pursuant to California Civil Code Sections 52 and 52.1.

42. In carrying out the acts described herein, Defendants McCLOSKEY and DOES 1-10, and each of them, acted intentionally, with malice, fraud, and oppression, and/or in reckless disregard for Plaintiff's rights, entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.



**FIFTH CAUSE OF ACTION  
FEDERAL CIVIL RIGHTS VIOLATIONS [42 U.S.C. §1983]  
(Defendants McCLOSKEY and DOES 1-10)**

43. Plaintiff refers to paragraphs 1-42 of this Complaint and incorporates by reference the allegations of said paragraphs as though set forth at length at this point.

44. All of the complained of acts and omissions alleged herein were done by Defendants under color of state law.

45. Defendants, in doing the things alleged herein, deprived Plaintiff of his rights under the United States Constitution, including but not limited to his right to be free from unreasonable searches and seizures secured by the Fourth and Fourteenth Amendments to the Constitution.

46. As a direct and proximate result of Defendants' actions as alleged herein, Plaintiff suffered damages in an amount according to proof at trial. Plaintiff was also required to retain undersigned counsel to prosecute his civil rights claims, entitling Plaintiff to an award of reasonable attorneys' fees.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

**SIXTH CAUSE OF ACTION  
FEDERAL CIVIL RIGHTS VIOLATIONS [42 U.S.C. §1983]  
(Defendants CCSF and DOES 11-20)**

47. Plaintiff refers to paragraphs 1-46 of this Complaint and incorporates by reference the allegations of said paragraphs as though set forth at length at this point.

48. Defendants CCSF and DOES 11-20, and each of them, as a matter of policy, practice, and custom, have with deliberate indifference to the rights of San Francisco residents, including Plaintiff, failed to adequately train, instruct, monitor, supervise or otherwise direct its officers and employees, including the individual Defendants herein, concerning the rights of citizens.

49. Defendants CCSF and DOES 11-20, and each of them, as a matter of policy, practice and custom, have with deliberate indifference to the rights of San Francisco residents, including Plaintiff, failed to use adequate hiring, disciplinary and firing procedures, thereby resulting in negligent and/or reckless hiring and/or retention of Defendants McCLOSKEY and DOES 1-10. Specifically, CCSF failed to adequately address the prior complaints regarding excessive use of force by Defendant McCLOSKEY, including a sustained finding of excessive force by Defendant

1 McCLOSKEY for kicking a man who was handcuffed on the ground. Such failure by CCSF  
2 includes, but is not limited to, demoting, reprimanding, terminating, suspending, or censuring  
3 Defendant McCLOSKEY.

4 50. The actions or omissions of Defendants McCLOSKEY and DOES 1-10 were  
5 ordered, approved, tolerated, authorized, directed, and/or ratified by policy making officers for  
6 Defendants CCSF and DOES 11-20, and each of them.

7 51. As a direct and proximate result of the acts, omissions, customs, policies, practices  
8 and/or procedures of Defendants CCSF and DOES 11-20, as alleged herein, Plaintiff sustained  
9 serious and permanent injuries, and other damages compensable by law, in an amount according  
10 to proof at trial.

11 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

12 **PRAYER**

13 WHEREFORE, Plaintiff prays for judgment as follows:

- 14 i. For compensatory damages in an amount according to proof;  
15 ii. For punitive damages against the individual Defendants;  
16 iii. For costs of suit, including reasonable attorneys' fees;  
17 iv. For an award of up to three times actual damages and civil penalties, pursuant to  
18 Cal. Civ. Code §§52 and 52.1.  
19 v. For such other and further relief as the Court may deem just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial by jury.

22  
23 DATED: October 4, 2010

BERSCHLER ASSOCIATES, PC  
LAW OFFICE OF JOSEPH S. MAY

24  
25 

26 By: ARNOLD I. BERSCHLER  
27 Attorneys for Plaintiff, FRED BROUSSARD  
28

## **NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: MAR-04-2011**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

### **ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

**See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges**

**PROOF OF SERVICE**

I, DOROTHY SILVER, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On November 3, 2010, I served the following document(s):

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (FEDERAL QUESTION JURISDICTION) [28 U.S.C. §§ 1441, 1446] and JURY TRIAL DEMAND**

on the following persons at the locations specified:

Arnold I. Berschler, Esq.  
BERSCHLER ASSOCIATES, PC  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

Joseph May  
LAW OFFICE OF JOSEPH S. MAY  
22 Battery Street, Suite 801  
San Francisco, CA 94111  
Fax: (415) 398-1410

*Attorneys for Plaintiff*

*Attorneys for Plaintiff*

in the manner indicated below:

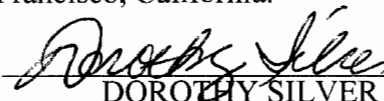
☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax # to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November 3, 2010, at San Francisco, California.

  
DOROTHY SILVER